TAN EAN LENG & ANOR. v. PENTADBIR TANAH DAERAH, KUALA MUDA, SUNGEI PATANI

[O.C.J. (Lim Beng Choon J.) February 22, 1987]

[Alor Setar – Originating Motion No. 32-23-86]

Land Law – Sale and purchase of land and subsequent transfer – Whether transfer should be registered – Whether "registrable dealing" under the National Land Code – National Land Code, s. 205(3) & (5).

By an agreement of sale dated April 5, 1979, the plaintiffs purchased a certain land. The purchase price was settled in full on February 28, 1980. Thereafter, a transfer was executed in respect of the land.

Subsequently by a letter dated June 23, 1986, the Land Administrator, Kuala Muda, Sungei Patani rejected the registration of the transfer instrument under section 205(3) of the National Land Code. The plaintiffs applied by way of a motion to set aside the decision of the Land Administrator.

The sole question in the present case was therefore whether the dealing entered into by the applicant, namely, the purchase and sale agreement relating to the land in question, was a registrable dealing under the National Land Code.

Held: (1) the new subsection (5) of section 205 validates the dealings as those contained in the present application;

(2) in any event, if there was any ambiguity or uncertainty in the wordings of subsection (5) it should be construed in favour of the applicant;

(3) in the present case, the registrar was wrong in refusing to register the instrument of transfer as presented to him.

Case referred to:

(1) *Tan Hong Chit* v. *Lim Kin Wan* [1964] M.L.J. 113.

ORIGINATING MOTION.

V. Muthusamy for the plaintiffs.

Abdul Malik bin Haji Ishak (State Legal Adviser, Kedah) for the defendant.

Cur. Adv. Vult.

Lim Beng Choon J.: The sole question in the present case is therefore whether the dealing entered into by the applicant, namely, the purchase and sale agreement relating to the land in question, is a registrable dealing under the National Land Code. Although subsection (3) of section 205 of the National Land Code provides that no dealing in respect of any alienated land or any interest therein subject to category agriculture shall be effected if such dealing would have the effect of creating any undivided share of such size that would be less than 2/5 of a hectare, nevertheless by the second amendment by Act A615 it is clearly stated that nothing contained in subsection (3) shall render invalid any instrument in dealing in any alienated land executed under this part before the commencement of this subsection. To my mind, the effect of the new subsection (5) validates the dealings as contained in the application for transfer made to the registrar. In any event, even if there is any ambiguity or uncertainty in the wording of subsection (5) it should be construed in favour of the applicant. In this respect, I would refer to the case of *Tan Hong Chit* v. *Lim Kin Wan*[1] where Suffian J. (as he then was) said:

"It has been held by the Privy Council in *David* v. *De Silva* [1934] A.C. 106 that where there is ambiguity as to the meaning of a disabling statute the construction which is in favour of the freedom of the individual should be given effect to."

In view of the authority and of the proper construction of subsection (5), I am of the view that the registrar was wrong in refusing to register the instrument of transfer as presented to him. I therefore granted an order in terms in respect of prayers (1), (2), (3) and (6).

Order accordingly.

Solicitors: *V. Muthusamy & Co.*

CETICO SDN. BHD. v. THE TROPICAL VENEER CO. BHD.

[O.C.J. (Shankar J.) October 27, 1986]

[Johore Bahru – Companies Winding-up No. 42-57 of 1986]

Companies and Corporations – Winding up of company – Petition for – Application by secured creditor to stay or dismiss petition – Merits of application – Unanimous wish of unsecured creditors to prevail over secured creditor.

The respondent, Tropical Veneer Co. Bhd., was a company that owed UMBC (the applicant in the present proceedings) a large amount of money. UMBC was a secured creditor. The respondent, however, also owed other unsecured creditors about $6 million. The unsecured creditors, including the petitioner Cetico Sdn. Bhd., presented a petition to the court to wind up the company. UMBC applied to dismiss or stay the petition.

Held, dismissing the application: (1) in the circumstances of this case, the unanimous wish of the unsecured creditors must prevail over the applicant bank;